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bcc

Subject UPCM Financial Assurance: RD/RA CD

Kevin:

This will follow up on our conversation this morning about the draft letter of credit that you emailed me yesterday.

For EPA to approve the letter of credit, the amount of financial responsibility needs to be at least as great as the amount in the Consent Decree, i.e, \$4,300,000, according to par. 42.

We would need the form of letter of credit to be the same as the model EPA document that I emailed you (as a scanned document) and sent by fax this morning. I just realized I did not send the form of the sight draft (Exhibit A), so I'll fax that, too.

I also do not quite understand why an entity other than United Park City Mines Company, the only defendant in the CD, would be establishing the letter of credit. The version of the letter of credit that you emailed yesterday refers to an agreement between EPA and that other entity (Talisker Finance LLC), which I'm unaware of.

Even though I did not get you a formal letter to this effect, I would like to confirm prior telephone conversations and I believe at least one email indicating that EPA would consider a deadline for any obligation of UPCM based on the Effective Date of the Consent Decree to run as if the date of entry were October 18, not October 4. As we discussed, this is because the judge signed the CD before the public comment period ended. Mark Elmer has confirmed that we did not receive any public comments.

Although we did not discuss the deadline for UPCM to execute or otherwise finalize the letter of credit, I see it as Monday, Nov. 19th. This is because par. 43 of the CD gives UPCM 30 days from the Effective Date to do so. Because for this purpose we consider the effective date to be October 18th, the deadline would be November 17th. This is a Saturday, so I would consider the deadline the next business day. Actually, I do not remember whether there is a provision in the CD postponing weekend deadlines to the next business day, but I doubt extending it to Monday is a problem. UPCM has 45 days from the Effective Date to submit the executed, original copy to EPA. That would be Saturday, Dec. 1st, which for the same reason I would consider Monday, December 3rd.

You have also requested to postpone the deadline under par. 47 for UPCM to file its first yearly petition for a reduction in financial responsibility. Our EPA team thought that we would first make sure that the entire amount was provided and then send a formal answer. I had meant to send you a more formal letter earlier stating this but did not, because I was out sick and got behind. I understand from this morning's phone call that you already have submitted UPCM's request for reduction because you did not hear back from us on whether we would extend your submission deadline. Therefore, the request for extension probably is no longer an issue. After the initial letter of credit is revised and approved, then I would expect EPA can respond to your request to reduce the financial responsibility.

Have a good Thanksgiving.

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